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## In this chapter . . .

This chapter discusses the money issues related to adoptions. Section 10.1 discusses who is responsible for paying foster care costs when a child is committed to a child placing agency pending an appeal or rehearing on a termination of parental rights.

Section 10.2 discusses adoption services for which consideration *must* be paid, adoption services for which consideration *may* be paid, and adoption services for which consideration *may not* be paid without court approval. This section also contains a discussion of the penalties for violating the consideration provisions of the Adoption Code.

Section 10.3 discusses the accounting and reporting requirements for the agencies and persons involved in an adoption. The accounting and reporting requirements ensure that the agencies or persons involved in an adoption did not receive any consideration that was not approved by the court.

Section 10.4 discusses adoption subsidies including the requirements to obtain a subsidy, applying for subsidies, and how subsidy determinations are made. This section does not include a discussion of how to appeal a subsidy determination. For information on appealing a subsidy determination, see Section 7.3(B).

## 10.1 Foster Care Costs

After the termination of parental rights, a child may be committed to a child placing agency and then placed for adoption. Pending the expiration of the

rehearing and appeal period, the court must authorize foster care funding. MCL 710.29(8) provides:

“The court shall authorize foster care funding pending expiration of the period of appeal or rehearing as provided in [MCL 710.64 and 710.65], and pending disposition of any appeal or rehearing, for all persons committed to a child placing agency. Foster care funding authorized under this subsection shall exclude the administrative costs of the child placing agency. The costs of foster care shall be paid through the use of the child care fund as provided by section 117c of the social welfare act, Act No. 280 of the Public Acts of 1939, being section 400.117c of the Michigan Compiled Laws, or by any successor statute. When foster care funding is authorized pursuant to this subsection, the court shall send a copy of the order to the [FIA]. Upon receiving a copy of this order, the [FIA] shall reimburse the court child care fund of the county where the court order for foster care funding was made in the total amount of the court ordered payment. The reimbursement shall be made monthly.”

## 10.2 Compensation for Adoption Services

Compensation for adoption services can be placed in three categories: services for which compensation *must* be paid, services for which compensation *may* be paid, and services for which compensation *may not* be paid without court approval. This section provides a detailed discussion of each category.

### A. Services for Which Compensation Must Be Paid

The prospective adoptive parent must pay for counseling related to the adoption for the parent or guardian, unless the parent or guardian waives the counseling pursuant to MCL 710.29 or MCL 710.44. MCL 710.54(5). MCL 710.29(5)(b) and MCL 710.44(5)(b) provide that a parent must indicate at the time of a release or a consent if he or she has either received counseling or waived counseling.\*

The adoptive parent must pay the “reasonable and actual charge” for preparation of the preplacement assessment and any additional investigation ordered pursuant to MCL 710.46.\* MCL 710.54(4).

### B. Services for Which Compensation May Be Paid

MCL 710.54(3) provides that an adoptive parent may pay the “reasonable and actual charge” for all of the following:

\*See Section 2.1 for information on release of parental rights and Section 2.6 for information on consents.

\*See Section 5.5 for information on investigation reports prepared pursuant to MCL 710.46.

“(a) The services of a child placing agency in connection with an adoption.

“(b) Medical, hospital, nursing, or pharmaceutical expenses incurred by the birth mother or the adoptee in connection with the birth or any illness of the adoptee, if not covered by the birth parent’s private health care payment or benefits plan or by medicaid.

“(c) Counseling services related to the adoption for a parent, a guardian, or the adoptee.

“(d) Living expenses of a mother before the birth of the child and for no more than 6 weeks after the birth.

“(e) Expenses incurred in ascertaining the information required under this chapter about an adoptee and the adoptee’s biological family.\*

“(f) Legal fees charged for consultation and legal advice, preparation of papers, and representation in connection with an adoption proceeding, including legal services performed for a biological parent or a guardian and necessary court costs in an adoption proceeding.

“(g) Traveling expenses necessitated by the adoption.”

Payment for any of the foregoing must not be made contingent on the placement of the child for adoption, release of the child, consent to the adoption, or cooperation in the completion of the adoption. If the adoption is not completed, an individual who has made any of the foregoing payments may not recover them. MCL 710.54(6).

### **C. Services for Which Compensation May Not Be Paid Without Court Approval**

Unless approved by the court, a person may not give or receive compensation for certain services in relation to an adoption. MCL 710.54(1) provides:

“(1) Except for charges and fees approved by the court, a person shall not pay or give, offer to pay or give, or request, receive, or accept any money or other consideration or thing of value, directly or indirectly, in connection with any of the following:

\*Section 4.6(G) discusses the compilation of information required by the Adoption Code.

\*See Section 5.1 for information on temporary placements and Section 6.1 for information on formal placements.

\*See Section 2.1 for information on releases.

\*See Section 2.6 for information on consents.

\*See Section 4.6 for information on petitions.

\*See Section 5.2 for information on preplacement assessments and Section 5.5 for information on investigation reports.

“(a) The placing of a child for adoption.\*

“(b) The registration, recording, or communication of the existence of a child available for adoption.

“(c) A release.\*

“(d) A consent.\*

“(e) A petition.\*”

Except for a child placing agency’s preparation of a preplacement assessment or investigation report,\* a person must *not* be compensated for the following activities:

- ♦ Assisting a parent or guardian in evaluating a potential adoptive parent.
- ♦ Assisting a potential adoptive parent in evaluating a parent or guardian or adoptee.
- ♦ Referring a prospective adoptive parent to a parent or guardian of a child for purposes of adoption.
- ♦ Referring a parent or guardian of a child to a prospective adoptive parent for purposes of adoption. MCL 710.54(2).

In *Doe v Attorney General*, 106 Mich App 169, 173-74 (1981), the Court of Appeals held that pursuant to MCL 710.54, surrogacy contracts are prohibited. In *Doe*, the plaintiffs, a husband and wife, wanted to enter into a contract with a surrogate mother for the birth of a child. The contract provided that the plaintiffs would pay the surrogate mother a specific sum of money, in addition to all medical bills related to the birth of the child, and in exchange the surrogate mother would be artificially inseminated, and when the child was born, she would release the child to the plaintiffs for adoption. 106 Mich App at 171-72. The plaintiffs challenged the constitutionality of MCL 710.54, indicating that it violated their right of privacy, which encompasses their right to bear a child. 106 Mich App at 173. The Court of Appeals held that MCL 710.54 was not a violation of the plaintiffs’ right of privacy because it did not prohibit the plaintiffs from having the child as planned; instead it prohibited

the plaintiffs from paying consideration in conjunction with their use of the state's adoption procedures. 106 Mich App at 174.

**Note:** MCL 710.54(1) prohibits compensation for adoption, unless approved by the court. Often in cases of step-parent adoption, a noncustodial parent will agree to consent to the adoption in exchange for the custodial parent's agreement to drop any child support arrearages. Whether the court may approve such an agreement has not been reviewed by the Court of Appeals or the Supreme Court. The court may find guidance in considering the following factors:

- To whom is the child support owed? The noncustodial parent, the child, and/or the state?
- Does a current support order exist? If a support order exists, the court may not retroactively modify a child support order. MCL 552.603(2).
- Would court approval of the agreement make the consent or release contingent upon future behavior? Could the agreement ever be enforced, and if so how?
- Does the agreement safeguard and promote the best interests of the adoptee and protect the rights of all the parties concerned? MCL 710.21a(b).
- Will the arrangement assure that the adoptee is free for adoptive placement at the earliest possible time? MCL 710.21a(c).
- MCL 710.29(5)(d) provides that a parent must verify that the validity and finality of the release is not affected by any collateral or separate agreement.

#### **D. Soliciting Adoptees and Adoptive Parents**

MCL 710.55(1) provides in part:

\*For information on who has the authority to make a temporary placement, see Section 5.1(A). For information on who has the authority to make a formal placement, see Section 6.1(A).

\*See Section 6.1 for information on formal placements.

\*In OAG, 1995, No 6844 (April 6, 1995), the attorney general found the additional requirements for adoption attorneys unconstitutional. See Section 8.2.

“Only a prospective adoptive parent may solicit biological parents or guardians of potential adoptees for the purposes of adoption. Only a biological parent or guardian or the court, [the FIA], or child placing agency with authority to place\* a child may solicit potential adoptive parents for purposes of adoption of that child.”

“Solicit” means “contact in person, by telephone or telegraph, by letter or other writing, or by other communication directed to a specific recipient. Solicit does not include public communication that is not directed to specific individuals.” MCL 710.55(2).

## 10.3 Reporting and Accounting Requirements

In order to ensure that the persons or agencies involved in an adoption have complied with the consideration provisions of the Adoption Code, MCL 710.54 and MCL 710.55, the persons and agencies involved in an adoption are required to file verified accounting statements with the court.

MCL 710.54(7) requires all of the following documentation to be filed with the court at least seven days prior to a formal placement:\*

“(a) A **verified accounting signed by the petitioner** itemizing all payments or disbursements of money or anything of value made or agreed to be made by or on behalf of the petitioner in connection with the adoption. The accounting shall include the date and amount of each payment or disbursement made, the name and address of each recipient, and the purpose of each payment or disbursement. Receipts shall be attached to the accounting.

“(b) A **verified statement of the attorney for each petitioner** itemizing the services performed and any fee, compensation, or other thing of value received by, or agreed to be paid to, the attorney for, or incidental to, the adoption of the child. If the attorney is an adoption attorney representing a party in a direct placement adoption, the verified statement shall contain the following statements:

(i) The attorney meets the requirements for an adoption attorney\* under [MCL 710.22].

(ii) The attorney did not request or receive any compensation for services described in [MCL 710.54(2)].

“(c) A **verified statement of the attorney for each parent** of the adoptee itemizing the services performed and any fee, compensation, or other thing of value received by, or agreed to be paid to, the attorney for, or incidental to, the adoption of the child. If the attorney is an adoption attorney representing a party in a

direct placement adoption, the verified statement shall contain the following statements:

- (i) The attorney meets the requirements for an adoption attorney under [MCL 710.22].
- (ii) The attorney did not request or receive any compensation for services described in [MCL 710.54(2)].

“(d) A **verified statement of the child placing agency or the [FIA]** itemizing the services performed and any fee, compensation, or other thing of value received by, or agreed to be paid to, the child placing agency or the [FIA] for, or incidental to, the adoption of the child, and containing a statement that the child placing agency or the department did not request or receive any compensation for services described in [MCL 710.54(2)].”  
[Emphasis added.]

Although MCL 710.54(7) requires the foregoing documentation to be filed at least seven days before a formal placement, MCR 3.803(B)(2) provides that the order placing the child may be entered before the filing of the accounting required by MCL 710.54(7).

In addition to filing the foregoing documentation, at least seven days prior to formal placement, all of the foregoing documents must be updated and filed with the court at least 21 days prior to the entry of a final adoption order. MCL 710.54(8). MCR 3.803(A)(1) provides that the update of the accounting filed pursuant to MCL 710.54(8) may include by reference the total expenses itemized in the verified accounting statement that was previously filed pursuant to MCL 710.54(7). If the verified statement filed pursuant to MCL 710.54(7) still reflects the current information when the 21-day update is due, the verified statement does not need to be updated. MCR 3.803(A)(2).

See Appendix B for the following SCAO forms:

- ♦ “Petitioners Verified Accounting,”
- ♦ “Statement of Services Performed by Agency/FIA,”
- ♦ “Statement of Services Performed by Attorney,” and
- ♦ “Parents or Guardians Verified Accounting.”

## 10.4 Court Approval of Fees

The court must approve or disapprove all fees and expenses. If an individual or an agency accepts or retains any amounts in excess of those approved by the court, that individual or agency is guilty of a misdemeanor. MCL 710.54(10). MCL 710.54(11) provides:

\*See Section 10.2 for information on MCL 710.54 and MCL 710.55.

“A person who violates [MCL 710.54] is guilty of a misdemeanor punishable by imprisonment for not more than 90 days or a fine of not more than \$100.00, or both, for the first violation, and of a felony punishable by imprisonment for not more than 4 years or a fine of not more than \$2,000.00, or both, for each subsequent violation. The court may enjoin from further violations any person who violates this section.”

The court may require sworn testimony from the persons who were involved in any way in informing, notifying, exchanging information, identifying, locating, assisting, or in any other way participating in the contracts or arrangements that, directly or indirectly, led to the placement of the adoptee for adoption in order to ensure compliance with MCL 710.54 and MCL 710.55.\* MCL 710.54(9).

MCR 3.803(B)(1) provides:

“Only one order approving fees disclosed in the financial reports required by MCL 710.54(7) need be entered, and it must be entered after the filing required by MCL 710.54(8).

MCL 710.54(8) requires the verified statements to be updated at least 21 days prior to the entry of the adoption order. See Section 10.3 for more information on verified statements.

## 10.5 Adoption Subsidies

In certain circumstances, adoptive parents are eligible for adoption subsidies. Parents may seek support subsidies, medical subsidies, or other financial assistance related to the adoption of a child. Support subsidies are controlled by a portion of the Social Welfare Act, MCL 400.115g et seq. The purpose of an adoption subsidy is to encourage the adoption of children who are in foster care by relieving the financial burden of adoption. *In re Klaus*, 108 Mich App 394, 403 (1981). More specifically, the purpose of adoption subsidies is to encourage the adoption of “children with special needs.” See Section 10.5(A)(1) for information on “children with special needs.”

The FIA is responsible for preparing and distributing to adoption facilitators and other interested persons a pamphlet describing the adoption assistance and the medical subsidy programs. MCL 400.115m(1).

See Appendix I for the “Michigan Adoption Subsidy Program Information Guide” prepared by the Michigan Family Independence Agency.



## A. Support Subsidies

“Support subsidy” is defined in MCL 400.115f(u) as “payment for support of a child who has been placed for adoption.” The FIA is responsible for determining eligibility for support subsidies. MCL 400.115g(2).

### 1. Requirements

MCL 400.115g(1) provides:

“(1) The [FIA] may pay a support subsidy to an adoptive parent of an adoptee who is placed in the home of the adoptive parent under the adoption code or under the adoption laws of another state or a tribal government,\* if all of the following requirements are met:

“(a) The [FIA] has certified that the adoptee is eligible for a support subsidy, based on all of the following:

(i) The adoptee is a child with special needs.

(ii) An adoptive parent requests a support subsidy.

(iii) The adoptee is in foster care at the time the [FIA] certifies the support subsidy.

“(b) Certification is made before the adoptee’s eighteenth birthday.

“(c) Certification is made before the petition for adoption is filed.

“(d) The adoptive parent requests the support subsidy not later than the date of confirmation of the adoption.”

MCL 400.115g(1)(a)(i) requires the adoptee to be a child with “special needs.” MCL 400.115f(h) provides that a “child with special needs” means an individual under the age of 18 years for whom the state has determined all of the following:

“(i) The child cannot or should not be returned to the home of the child’s parents.

“(ii) A specific factor or condition, or a combination of factors and conditions, exists with respect to the child so that it is reasonable to conclude that the child cannot be placed with an adoptive parent without providing adoption assistance under this act. The factors or conditions to be considered may include ethnic or family background, age, membership in a minority or sibling group, medical condition, physical, mental, or emotional disability, or

\*See Chapter 11 for more information on the Indian Child Welfare Act.

length of time the child has been waiting for an adoptive home.

“(iii) A reasonable but unsuccessful effort was made to place the adoptee with an appropriate adoptive parent without providing adoption assistance under this act or a prospective placement is the only placement in the best interest of the child.”

MCL 400.115g(1)(a)(iii) provides that the “adoptee is in foster care at the time the [FIA] certifies the support subsidy.” “Foster care” is defined in MCL 400.115f(1) as “placement of a child outside the child’s parental home by and under the supervision of a child placing agency, the court, the [FIA], or the department of community health.”

**Note:** In order to receive adoption subsidies, the FIA must certify that the family is eligible for support subsidies *prior* to the filing of the adoption petition. MCL 400.115g(1)(c). See Section 4.8 for more information on adoption petitions.

The FIA must determine eligibility for support subsidies without regard to the income of the adoptive parent or parents. The amount of the subsidy must be equal to the family foster care rate, including the difficulty of care rate, that was paid for the adoptee while the adoptee was in family foster care. However, the amount must be increased to reflect increases made in the standard age-appropriate foster care rate paid by the FIA. MCL 400.115g(2).

The FIA must complete the certification process within 30 days after it receives a request for a support subsidy. MCL 400.115g(3).

## 2. Adoption Assistance Agreement

If a support subsidy is to be paid, the FIA and the adoptive parent or parents must enter into an adoption assistance agreement. MCL 400.115i(1) requires the agreement to cover all of the following:

“(a) The duration of the adoption assistance to be paid.

“(b) The amount to be paid and, if appropriate, eligibility for medical assistance.

“(c) Conditions for continued payment of the adoption assistance as established by statute.”

The FIA must provide a copy of the adoption assistance agreement to the adoptive parent or parents. MCL 400.115i(3).

An adoption assistance agreement does not affect the legal status of the adoptee or the legal rights and responsibilities of the adoptive parent or parents. MCL 400.115i(5).

**Note:** Adoption assistance is defined as “a support subsidy or medical assistance, or both.” MCL 400.115f(b). “Medical assistance” is defined in MCL 400.115f(m) as “the federally aided medical assistance program under title XIX of the social security act, chapter 531, 49 Stat. 620, 42 U.S.C. 1396 to 1396f, 1396g-1 to 1396r-6 and 1396r-8 to 1396v.” “Medical assistance” is not a medical subsidy as provided in Section 10.5(B).

### 3. Duration of Support Subsidy

The adoptive parent or parents must file a verified report with the FIA at least once each year. The report must indicate the location of the adoptee and any other matters relating to the adoptee’s continuing eligibility for adoption assistance. MCL 400.115i(6).

Adoption assistance must continue until one of the following occurs:

- ♦ the adoptee becomes 18 years of age,
- ♦ the adoptee is emancipated,
- ♦ the adoptee dies,
- ♦ the adoption is terminated, or
- ♦ a determination of ineligibility is made by the FIA. MCL 400.115j(1).

MCL 400.115j(2) provides:

“(2) If sufficient money is appropriated, the [FIA] may continue adoption assistance or a medical subsidy,\* or both, for an adoptee under 21 years of age if the [FIA] determines that the adoptee is a student regularly attending a high school, college, university, or vocational school in pursuance of a course of study leading to a high school diploma, college degree, or gainful employment.”

\*See Section 10.5(B) for information on medical subsidies.

Adoption assistance must continue even if the adoptive parent leaves the state. MCL 400.115j(3).

An adoption support subsidy must continue during a period in which the adoptee is removed from his or her home for delinquency and made a temporary court ward based on proceedings under MCL 712A.2. MCL 400.115j(4).

Upon the death of the adoptive parent, the FIA must continue making support subsidy payments to the adoptee's guardian appointed pursuant to MCL 700.5202 and 700.5204 of the Estates and Protected Individuals Code. MCL 400.115j(5).

Failing to file a timely annual report is not a proper ground for terminating a support subsidy where the failure to file the report was not willful and there was substantial compliance with the reporting requirement. *In re Klaus*, 108 Mich App 394, 401-402 (1981).

## **B. Medical Subsidies**

A “medical subsidy” is “payment for medical, surgical, hospital, and related expenses necessitated by a specified physical, mental, or emotional condition of a child who has been placed for adoption.” MCL 400.115f(n).

### **1. Requirements**

MCL 400.115h(1)–(2) provide:

“(1) The [FIA] may pay a medical subsidy to the adoptive parent or parents of an adoptee who is placed for adoption in the home of the adoptive parent or parents pursuant to the adoption code or the laws of any other state or a tribal government, if all of the following requirements are met:

“(a) The expenses to be covered by the medical subsidy are necessitated by a physical, mental, or emotional condition of the adoptee that existed or the cause of which existed before the adoption petition was filed or certification was established, whichever occurred first.

“(b) The adoptee was in foster care at the time the petition for adoption was filed. This subdivision does not apply to adoptions confirmed pursuant to the adoption code before June 28, 1992.

“(c) Certification was made before the adoptee's eighteenth birthday.

“(2) The [FIA] shall determine the amount of the medical subsidy without respect to the income of the adoptive parent or parents. The [FIA] shall not pay a medical subsidy until all other available public money and third party payment is used. For purposes of this subsection, third party payment is available if an adoptive parent has an option, at or after the time of certification, to obtain from the parent's employer health coverage for the child, with or without cost to the adoptive parent. The [FIA] may waive this subsection in cases of undue hardship.”

## 2. Requests for Medical Subsidies

MCL 400.115h(3) provides:

“The adoptive parent or parents may request a medical subsidy before or after the confirmation of the adoption. A medical subsidy requested after the adoptee is placed in adoption is effective the date the request is received by the [FIA] if the necessary documentation for certification is received within 90 days after the request is made. In allocating available funding for medical subsidies, the [FIA] shall not give preferential treatment to requests that are made before the confirmation of an adoption, but shall allocate funds based on a child’s need for the subsidy.”

## 3. Treatment for Mental or Emotional Conditions

MCL 400.115h(4) provides that the payment of a medical subsidy for treatment of a mental or emotional condition is limited to outpatient treatment unless one or more of the following apply:

“(a) Certification for the medical subsidy was made before the adoption confirmation date.

“(b) The adoptee was placed in foster care by the court pursuant to section 18(1)(d) or (e) of chapter XIIA of Act No. 288 of the Public Acts of 1939, being section 712A.18 of the Michigan Compiled Laws, before the petition for adoption was filed.

“(c) The adoptee was certified for a support subsidy.”

## 4. Medical Subsidy Agreement

When medical subsidy eligibility is certified, the FIA and the adoptive parent must enter into a medical subsidy agreement. MCL 400.115i(2). The medical subsidy agreement must cover all of the following:

- ♦ Identification of the physical, mental, or emotional condition covered by the medical subsidy.
- ♦ The duration of the medical subsidy agreement.
- ♦ Conditions for continued eligibility for the medical subsidy as established by statute. MCL 400.115i(2).

The FIA must provide a copy of the medical subsidy agreement to the adoptive parent or parents. MCL 400.115i(3).

A medical subsidy agreement does not affect the legal status of the adoptee or the legal rights and responsibilities of the adoptive parent or parents. MCL 400.115i(5).

## 5. Duration of Medical Subsidy

The FIA must not modify or discontinue a medical subsidy unless the medical condition of the adoptee no longer exists or an event described in MCL 400.115j has occurred as indicated in either a report filed pursuant to MCL 400.115i(6) or as determined by the FIA. MCL 400.115i(4).

MCL 400.115j(1) provides that a medical subsidy must continue until one of the following occurs:

- ♦ the adoptee becomes 18 years of age,
- ♦ the adoptee is emancipated,
- ♦ the adoptee dies,
- ♦ the adoption is terminated, or
- ♦ a determination of ineligibility is made by the FIA.

At least once each year, the adoptive parent or parents must file a verified report with the FIA. The report must indicate where the adoptee is located and inform the FIA regarding any other matters relating to the continuing eligibility of the adoptee for the medical subsidy. MCL 400.115i(6).

MCL 400.115j(2) provides:

“(2) If sufficient money is appropriated, the [FIA] may continue adoption assistance or a medical subsidy, or both, for an adoptee under 21 years of age if the [FIA] determines that the adoptee is a student regularly attending a high school, college, university, or vocational school in pursuance of a course of study leading to a high school diploma, college degree, or gainful employment.”

A medical subsidy must continue even if the adoptive parent leaves the state. MCL 400.115j(3).

If an adoptive parent dies, the FIA must continue medical subsidy eligibility to the guardian of the adoptee if the guardian was appointed pursuant to MCL 700.5202 or MCL 700.5204 of the Estates and Protected Individuals Code. MCL 400.115j(5).

## C. Nonrecurring Adoption Expenses

An adoptive parent or adoptive parents may also be eligible for reimbursement of nonrecurring adoption expenses. MCL 400.115l(1) provides:

“(1) The [FIA] shall enter into an agreement with the adoptive parent or parents of a child with special needs under this section

for the payment of nonrecurring adoption expenses incurred by or on behalf of the adoptive parent or parents. The agreement may be a separate document or part of an adoption assistance agreement under [MCL 400.115i]. The agreement under this section shall indicate the nature and amount of nonrecurring adoption expenses to be paid by the [FIA], which shall not exceed \$2,000.00 for each adoptive placement meeting the requirements of this section. The [FIA] shall make payment as provided in the agreement.”

A “child with special needs” is defined in MCL 400.115f(h) as an individual under the age of 18 years for whom the state has determined all of the following:

“(i) The child cannot or should not be returned to the home of the child’s parents.

“(ii) A specific factor or condition, or a combination of factors and conditions, exists with respect to the child so that it is reasonable to conclude that the child cannot be placed with an adoptive parent without providing adoption assistance under this act. The factors or conditions to be considered may include ethnic or family background, age, membership in a minority or sibling group, medical condition, physical, mental, or emotional disability, or length of time the child has been waiting for an adoptive home.

“(iii) A reasonable but unsuccessful effort was made to place the adoptee with an appropriate adoptive parent without providing adoption assistance under this act or a prospective placement is the only placement in the best interest of the child.”

An agreement for nonrecurring adoption expenses must be signed at or before entry of the adoption order. Claims for payment must be filed with the FIA within two years after entry of the order of adoption. MCL 400.115l(2).

MCL 400.115l(3) requires the FIA to “take all actions necessary and appropriate to notify potential claimants under [MCL 400.115l], including compliance with federal regulations.”

## **D. Appeals of Subsidy Determinations**

MCL 400.115k provides that an adoptee, the adoptee’s guardian, or the adoptive parent or parents may appeal a determination of the FIA regarding adoption subsidies. The adoptee and the adoptive parents must be notified by the FIA of their right to appeal the FIA’s subsidy determination. MCL 400.115k(2). For information on appealing a subsidy determination, see Section 7.3(B).

## 10.6 Federal Funding for Adoption Assistance

The Adoption and Safe Families Act (ASFA) authorized appropriations to enable the states to provide adoption assistance. 42 USC 671 provides that the state must have a plan approved by the Secretary which contains certain provisions and assurances. The majority of the provisions for the state plan pursuant to ASFA apply to child protective proceedings. However, the following provisions and assurances that apply specifically to adoptions must be provided in the state plan:

- provisions for adoption assistance in accordance with 42 USC 673; 42 USC 671(a)(1).
- provisions for periodic review of adoption assistance payments to assure their continuing appropriateness;\* 42 USC 671(a)(11).
- provisions for reasonable efforts to place a child for adoption or with a legal guardian may be made concurrently with reasonable efforts to preserve and reunify families; 42 USC 671(a)(15)(F).
- provisions that neither the state nor any other entity in the state that receives funds from the federal government and is involved in adoption may deny any person the opportunity to become an adoptive parent on the basis of the race, color, or national origin of the person, or of the child involved, or delay or deny the placement of a child for adoption on the basis of the race, color, or national origin of the adoptive parent or the child;\* 42 USC 671(a)(18).
- provisions that the state shall consider giving preference to an adult relative over a non-relative caregiver when determining a placement for a child, provided that the relative caregiver meets all relevant state child protection standards; 42 USC 671(a)(19).
- provisions for procedures for criminal record checks for any prospective adoptive parent before the adoptive parent may be finally approved for placement of a child on whose behalf adoption assistance payments are to be made under the State plan; 42 USC 671(a)(20)(A). (The state may opt out of this provision. 42 USC(a)(20)(B). However, Michigan has not opted out of this provision.)\*
- provisions that a final order of adoption will not be granted to a prospective adoptive parent who has a felony conviction for child abuse or neglect, for spousal abuse, for a crime against children (including child pornography), or for a crime involving violence, including rape, sexual assault, or homicide, but not including other physical assault or battery; 42 USC 671(a)(20)(A)(i).\* (The state may opt out of this provision. 42 USC(a)(20)(B). However, Michigan has not opted out of this provision.)

\*See MCL  
400.115g(2).

\*See Sections  
5.3 and 6.2.

\*See Sections  
5.3 and 6.2.

\*See Sections  
5.3 and 6.2.



- provisions that a final order of adoption will not be granted to a prospective adoptive parent who has a felony conviction for physical assault, battery, or a drug-related offense, if the felony was committed within the previous five years;\* 42 USC 671(a)(20)(A)(ii). (The state may opt out of this provision. 42 USC(a)(20)(B). However, Michigan has not opted out of this provision.)
- provisions for health insurance coverage for any child who has been determined to be a child with special needs, for whom there is in effect an adoption assistance agreement\* between the state and the adoptive parent; 42 USC 671(a)(21). (For more information on the specific requirements of the health insurance coverage, see 42 USC 671(a)(21)(A)–(D).)
- provisions that the state shall not deny or delay the placement of a child for adoption when an approved family is available outside of the jurisdiction with responsibility for handling the case of the child;\* 42 USC 671(a)(23)(A).
- provisions for the diligent recruitment of potential adoptive families that reflect the ethnic and racial diversity of children in the state for whom adoptive homes are needed; 42 USC 622(b)(9).
- assurances that the state will develop plans for the effective use of cross-jurisdictional resources to facilitate timely adoptive or permanent placements for waiting children; 42 USC 622(b)(12).
- assurances that the state has undertaken activities for children adopted from other countries, including the provision of adoption and post-adoption services; 42 USC 622(b)(13).
- provisions that the state will collect and report information on children who are adopted from other countries and who enter into state custody as a result of the disruption of a placement for adoption or the dissolution of an adoption, including the number of children, the agencies who handled the placement or adoption, the plans for the child, and the reasons for the disruption or dissolution; 42 USC 622(b)(14).

For a full listing of all of the provisions and assurances which must be provided in the state plan, see 42 USC 671 and 42 USC 622.

\*See Sections  
5.3 and 6.2.

\*See Section  
10.5 for  
information on  
adoption  
assistance  
agreements.

\*See Section  
4.6.